

Letter of Findings Number: 04-20110146
Sales/Use Tax
For Tax Year 2007

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ISSUE

I. Sales/Use Tax–Farm Equipment.

Authority: IC § 6-8.1-5-1(c); IC § 6-2.5-3-2(a); IC § 6-2.5-3-4; IC § 6-2.5-5-2; IC § 6-8.1-10-1(e); [45 IAC 2.2-5-4](#); [45 IAC 2.2-5-3](#); [45 IAC 2.2-5-6](#)(d).

Taxpayer protests the imposition of use tax on equipment.

STATEMENT OF FACTS

Taxpayer purchased a skid steer, bale spear, and manure fork ("equipment") tax exempt. The Department issued a proposed assessment for use tax on the equipment. Taxpayer filed a protest. An administrative hearing was conducted and this Letter of Findings results. Further facts will be supplied as required below.

I. Sales/Use Tax–Farm Equipment.

DISCUSSION

The Department initially notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

Indiana imposes "an excise tax, known as the use tax," on tangible personal property that is acquired in retail transactions and is stored, used, or consumed in Indiana. IC § 6-2.5-3-2(a). An exemption from the use tax is granted for transactions when sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4. Since Taxpayer did not pay sales tax at the time of the purchase, the Department found that the purchase was subject to use tax.

As noted, Taxpayer purchased the equipment tax exempt–Taxpayer signed a "General Sales Tax Exemption Certificate," with Taxpayer checking the box for "Sales to persons, occupationally engaged as farmers, to be used directly in production of agricultural products for sale." Taxpayer also subsequently filled out the Department's "Agricultural Equipment Exemption Usage Questionnaire." The Department reviewed the questionnaire submitted by Taxpayer and had a telephone conversation with Taxpayer. The Department responded with a letter to Taxpayer stating that the Department had found that the skid steer was used for three exempt activities and two non-exempt activities. The two non-exempt uses of the equipment were the following: running/checking fence (30 days a year) and the moving of bales (90 days a year). Thus the Department found Taxpayer's use of the equipment to be partially exempt (in the Department's letter, the Department waived the penalty, and informed Taxpayer that interest "cannot be waived per statu[t]e." The statute referred to regarding interest is IC § 6-8.1-10-1(e)). Taxpayer protested the portion that was found taxable.

The Department's letter cited to IC § 6-2.5-5-2 and [45 IAC 2.2-5-4](#). Turning to IC § 6-2.5-5-2, the statute states:

- (a) Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.
- (b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:
 - (1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;
 - (2) the person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food and food ingredients or commodity production; and
 - (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

(Emphasis added).

And [45 IAC 2.2-5-4](#) states in relevant part:

- (c) The following is a partial list of items which are considered subject to the sales tax.

TAXABLE TRANSACTIONS

Fences, posts, gates, and fencing materials.

Water supply systems for personal use.

Drains.

Any motor vehicle which is required by the motor vehicle law to be licensed for highway use.

Ditchers and graders.

Paints and brushes.

Refrigerators, freezers, and other household appliances.
Garden and lawn equipment, parts, and supplies.
Electricity for lighting and other non-agricultural use.
Any materials used in the construction or repair of non-exempt: buildings, silos, grain bins, corn cribs, barns, houses, and any other permanent structures.
Items of personal apparel, including footwear, gloves, etc., furnished primarily for the convenience of the workers if the workers are able to participate in the production process without it.
Pumps.
All saws.
All tools, including forks, shovels, hoes, welders, power tools, and hand tools.
Building materials or building hardware such as lumber, cement, nails, plywood, brick, paint.
Plumbing, electrical supplies, and accessories, pumps.
Horses, ponies, or donkeys not used as draft animals in the production of agricultural products.
Food for non-exempt horses, ponies, etc.
Fertilizer, pesticides, herbicides, or seeds to be used for gardens and lawns.
Field tile or culverts.
Graders, ditchers, front end loaders, or similar equipment (except equipment designed to haul animal waste).
Any replacement parts or accessories for the above items.
(Emphasis added).

[45 IAC 2.2-5-4](#)(e) also states in relevant part: "The fact that an item is purchased for use on the farm does not necessarily make it exempt from sale [sic.] tax. It must be directly used by the farmer in the direct production of agricultural products." [45 IAC 2.2-5-4](#)(f) states that "[i]f a farmer makes a purchase tax exempt and later determines that the purchase should have been taxable, a use tax is due on the purchase price and should be remitted to the department of revenue...."

Taxpayer protests that its use of the equipment for fence-related activities and moving bales of hay are both exempt uses. Regarding the former, Taxpayer at the hearing stated that it uses fencing to divide its fields for the sheep, and the protested equipment is used to pull the posts, haul the posts, and take the mower to the fields. Per Taxpayer, the pasture area for the sheep has to be changed/rotated every couple of weeks. Taxpayer states that the tools for the fencing are hauled by the skid steer. Although fencing is normally taxable (see [45 IAC 2.2-5-4](#)(c)), under certain circumstances it can be exempt. Those circumstances are dealt with by [45 IAC 2.2-5-3](#)(e)(3), which states:

Fences, fencing materials, gates, posts, and electric fence chargers are exempt only if the same are purchased for use in confining livestock during the production processes of breeding, gestation, farrowing, calving, nursing, or finishing.

In Taxpayer's case the fencing itself is not what is at issue—what is at issue is the equipment that Taxpayer argues is used to install fencing (i.e., the skid steer). [45 IAC 2.2-5-3](#)(e)(3) does not exempt the equipment to install fencing. Furthermore, Taxpayer's use of the equipment does not meet the double direct test set out in IC § 6-2.5-5-2(a).

Taxpayer further states that the equipment is used to move bales of hay. As Taxpayer explained at the hearing, the hay is moved from storage areas to a centralized feeding area. [45 IAC 2.2-5-6](#)(d) states:

(d) Exempt purchases: (1) Feeds—Sales of agricultural machinery, tools, and equipment used by the purchaser directly in feeding exempt animals, poultry, etc., are exempt from tax. This exemption does not extend to machinery, equipment, and tools used for the handling, movement, transportation, or storage of feed prior to the actual feeding process.

Taxpayer moves the bales of hay from one location, to another centralized location. Taxpayer's hauling of the bales of hay is not exempt—as [45 IAC 2.2-5-6](#)(d) states, "This exemption does not extend to machinery, equipment, and tools used for the handling, movement, transportation, or storage of feed prior to the actual feeding process." (Emphasis added). Taxpayer has not met the burden of proof set out in IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is respectfully denied.

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